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United States Marshals Service and Department of Justice

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

MICHAEL SCHULZE,

Plaintiff,

v.

FEDERAL BUREAU OF  
INVESTIGATION, DRUG  
ENFORCEMENT ADMINISTRATION,  
UNITED STATES MARSHALS  
SERVICE and DEPARTMENT OF  
JUSTICE,

Defendants.

1:05-cv-00180-AWI-GSA

**DEFENDANTS' EX PARTE  
APPLICATION FOR COURT TO SET  
TIME BY WHICH THEY MUST FILE  
SUR-REPLY PAPERS IN SUPPORT OF  
SUMMARY JUDGMENT; ORDER**

[Local Rule 6-144(c)]

Pursuant to Local Rule 6-144 , defendants Federal Bureau of Investigation, Drug  
Enforcement Administration, United States Marshals Service and Department of Justice  
("defendants") request by way of this ex parte application for the court to set a date by which  
they must file sur-reply papers in support of their motion for summary judgment. Defendants  
request that this deadline be set at thirty days from the filing of these ex parte papers, and base  
this application on good cause. Defendants explain as follows:

1. Plaintiff Michael Schulze brings FOIA and Privacy Act claims against defendants  
while incarcerated within the Bureau of Prisons system. (Declaration of Brian W. Enos ("Enos  
Decl."), para. 2).

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2. By way of brief background, defendants filed their summary judgment papers

1 regarding all of plaintiff's claims on July 13, 2007. (Enos Decl., para. 4). As revealed in the  
2 court's June 13, 2008 order, it has provided plaintiff extensions of time by which to oppose  
3 defendant's motion on at least five separate occasions<sup>1</sup>, and in fact specifically ordered that  
4 "Plaintiff's opposition to Defendant's motion for summary judgment SHALL BE FILED by July  
5 1, 2008." (Ibid.). This same order required defendants to file their reply papers by July 14, 2008.  
6 (Ibid.).

7 3. Plaintiff failed to file any opposition papers to defendants' summary judgment  
8 motion by his July 1, 2008 deadline. (Enos Decl., para. 5). As a result, defendants filed a reply  
9 brief on July 7, 2008 (and seven days prior to their deadline by which to file the same as  
10 indicated in the Court's June 13, 2008 order, assuming plaintiff's opposition papers were timely  
11 filed) advising the court that no opposition papers had been filed by the July 1, 2008 deadline.  
12 (Ibid.)

13 4. On July 8, 2008, plaintiff filed his opposition to defendants' summary judgment  
14 motion, which comprises 76 separate pages of material. (Enos Decl., para. 6). On July 13, 2008,  
15 defendants' counsel attempted to contact counsel for each of the three separate agencies plaintiff  
16 sues in this case regarding plaintiff's opposition papers. (Ibid.). Thus far, he has only spoken to  
17 one of them. (Ibid.).

18 5. Defendants request thirty days from the filing of these ex parte papers by which to  
19 file sur-reply papers in support of their summary judgment motion. (Enos Decl., para. 7). In light  
20 of (1) plaintiff's untimely opposition papers, which were ultimately filed a full 361 days after the  
21 filing of defendants' summary judgment motion and after the court's above-stated deadlines, (2)  
22 the volume of issues addressed within plaintiff's opposition papers, (3) defense counsel's need to  
23 coordinate the preparation of sur-reply papers among three separate agencies, (4) the existence of  
24 a variety of other hard deadlines to which defendant's counsel is in the midst of adhering

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26 <sup>1</sup> As stated in the Court's June 13, 2008 order, it granted plaintiff additional time by which to file any  
27 opposition to defendants' July 2007 summary judgment motion no less than five times, including: (1) August 29,  
28 2007 (Doc. 60), (2) October 19, 2007 (Doc. 66), (3) February 29, 2008 (Doc. 69), (4) March 24, 2008 (Doc. 71) and  
(5) June 13, 2008. (Doc. 75). (Enos Decl., para. 4).

(including those regarding other cases in this court) and (5) defense counsel's scheduled out-of-town leave with his family the week of August 4, 2008, defendants base this application on good cause. (Ibid.).

6. A timely stipulation extending time cannot be reasonably obtained, in that plaintiff, acting pro se, is presently incarcerated at a USP facility in South Carolina. (Enos Decl., para. 8).

7. In light of the foregoing, defendants request the court to set the parties' deadline by which to file their sur-reply papers at thirty days from the filing of these ex parte papers. (Enos Decl., para. 9).

Respectfully submitted,

Dated: July 30, 2008

McGREGOR W. SCOTT  
United States Attorney

By: /s/ Brian W. Enos \_\_\_\_\_  
BRIAN W. ENOS  
Assistant U.S. Attorney  
Attorneys for defendants

**ORDER**

IT IS SO ORDERED.

Dated: August 1, 2008

/s/ Anthony W. Ishii  
CHIEF UNITED STATES DISTRICT JUDGE